

JAN - 2 2013

**Board of Vocational Nursing
and Psychiatric Technicians**

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9 **BEFORE THE**
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. VN-2011-593

14 **BETTY ANNE HUMENIK**
4525 Beverly Glen Drive
Oceanside, California 92056

A C C U S A T I O N

15 **Vocational Nurse License No. VN 139521**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and
22 Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about February 24, 1988, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 139521 to Betty Anne Humenik
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on July 31, 2013, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the
7 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of
the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

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10 (f) Conviction of a crime substantially related to the qualifications,
11 functions, and duties of a licensed vocational nurse, in which event the record of
the conviction shall be conclusive evidence of the conviction.

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13 (j) The commission of any act involving dishonesty, when that action
14 is related to the duties and functions of the licensee.

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16 REGULATORY PROVISIONS

17 10. California Code of Regulations, title 16, (CCR) section 2521, states:

18 For the purposes of denial, suspension, or revocation of a license pursuant
19 to Division 1.5 (commencing with Section 475) of the Business and Professions
20 Code, a crime or act shall be considered to be substantially related to the
21 qualifications, functions or duties of a licensed vocational nurse if to a substantial
degree it evidences present or potential unfitness of a licensed vocational nurse to
perform the functions authorized by his license in a manner consistent with the
public health, safety, or welfare. Such crimes or acts shall include but not be
limited to those involving the following:

22 (a) Procuring a license by fraud, misrepresentation, or mistake.

23 (b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

24 (c) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of, or conspiring to violate any provision or term of
Chapter 6.5, Division 2 of the Business and Professions Code.

25 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
26 whether a licensed physician or not, in the performance of or arranging for a
violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
27 Business and Professions Code.

28 (e) Conviction of a crime involving fiscal dishonesty.

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1 (f) Any crime or act involving the sale, gift, administration, or furnishing
2 of "narcotics or dangerous drugs or dangerous devices" as defined in Section
3 4022 of the Business and Professions Code.

4 11. CCR section 2522 states:

5 When considering a) the denial of a license under Section 480 of the
6 Business and Professions Code, b) the suspension or revocation of a license on the
7 ground that a licensee has been convicted of a crime, or c) a petition for
8 reinstatement of a license under Section 2787.7 of the Business and Professions
9 Code, the Board in evaluating the rehabilitation of an individual and his or her
10 present eligibility for a license, will consider the following criteria:

- 11 (1) Nature and severity of the act(s), offense(s), or crime(s) under
12 consideration.
- 13 (2) Actual or potential harm to the public.
- 14 (3) Actual or potential harm to any patient.
- 15 (4) Overall disciplinary record.
- 16 (5) Overall criminal actions taken by any federal, state or local agency or
17 court.
- 18 (6) Prior warnings on record or prior remediation.
- 19 (7) Number and/or variety of current violations.
- 20 (8) Mitigation evidence.
- 21 (9) In case of a criminal conviction, compliance with terms of sentence
22 and/or court-ordered probation.
- 23 (10) Time passed since the act(s) or offense(s) occurred.
- 24 (11) If applicable, evidence of proceedings to dismiss a conviction
25 pursuant to Penal Code section 1203.4.
- 26 (12) Cooperation with the Board and other law enforcement or regulatory
27 agencies.
- 28 (13) Other rehabilitation evidence.

29 COST RECOVERY

30 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
31 the administrative law judge to direct a licensee found to have committed a violation or
32 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
33 and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Oct. 27, 1994 Criminal Conviction for Receipt Of Stolen Property On Aug. 12, 1994)**

3 13. Respondent has subjected her license to disciplinary action under Code sections
4 490 and 2878, subdivision (f) in that she was convicted of a crime substantially related to the
5 qualifications, functions, and duties of a vocational nurse. The circumstances are as follows:

6 a. On October 27, 1994, in a criminal proceeding entitled *The People of the*
7 *State of California vs. Betty Anne Humenik*, in the Municipal Court of Los Angeles County
8 Judicial District, Long Beach Courthouse, case number 94M05406, Respondent was convicted
9 on her plea of *nolo contendere* to violating Penal Code (PC) section 496, subdivision (a),
10 receiving stolen property, a misdemeanor.

11 b. As a result of the conviction, on October 27, 1994, Respondent was
12 granted one year summary probation and sentenced to serve three days in the Los Angeles
13 County Jail, with credit for three days served. Respondent was also ordered to pay fines and fees
14 and complete 216 hours of community service. On February 1, 1995, Respondent's probation
15 was revoked. On November 27, 1995, Respondent admitted to probation violation and her
16 probation was restored. On February 26, 1996, Respondent's probation was terminated.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(August 2, 2007 Criminal Conviction for Child Endangerment on July 24, 2007)**

19 14. Respondent has subjected her license to disciplinary action under Code sections
20 490 and 2878, subdivision (f) in that she was convicted of a crime substantially related to the
21 qualifications, functions, and duties of a vocational nurse. The circumstances are as follows:

22 a. On or about August 2, 2007, in a criminal proceeding entitled *The People*
23 *of the State of California vs. Betty Anne Humenik, aka Betty Anne Mowell, aka Betty Anne*
24 *Cannon*, in San Bernardino County Superior Court, Joshua tree District, Case Number
25 FMB700333, Respondent was convicted on her plea of *nolo contendere* to violating PC section
26 273a, subdivision (a), child abuse, a serious felony within the meaning of PC section 1192.7,
27 subdivision (c) and a violent felony within the meaning of PC 667.5, subdivision (c). Charges for
28 violation of PC section 243, subdivision (d), battery with serious bodily injury and another count

1 for violation of PC sections 273a, subdivision (a), child endangerment, felonies, were dismissed
2 pursuant to a plea bargain.

3 b. As a result of the conviction, on or about October 25, 2007, Respondent
4 was granted 48 months supervised probation and sentenced to serve 365 days in the San
5 Bernardino County Jail, with credit for 52 days served, without the possibility of county parole.
6 Respondent was also ordered to participate in the Inroads Program and complete the required
7 classes, perform 40 hours of community service, and successfully complete a child abuse
8 prevention program of 52 weekly sessions. Respondent was further ordered to pay fines, fees,
9 and restitution; to not attack, strike, threaten, harass, stalk, or sexually abuse the victims; and to
10 not have any contact with the victims nor be within 100 yards of their school or residence. On
11 June 24, 2011, pursuant to Respondent's motion, the criminal charge was deemed a
12 misdemeanor and the case dismissed under PC sections 1203.4 and 1203.4a.

13 c. The facts that led to the conviction are that on or about three weeks prior
14 to her arrest, Respondent had allowed her son, his wife, their three children, and three additional
15 children the couple were watching to move in with her at her home in Wonder Valley,
16 California. Respondent's son, daughter-in-law, grandchildren, and the three other children were
17 waiting for a house to open up of their own in the area. Respondent required the children to
18 gather rocks to place around the border of her house and for the leach line at an additional
19 property she managed. Respondent also required the children to dig a ditch. Respondent's
20 working hours for her laborers included noontime with water break every two hours. Respondent
21 also enforces a system of discipline on her juvenile workforce. Minor breaches of discipline
22 among her grandchildren would merit walking around a flowerbed area or out around the road
23 and through the property from three to six hours or until Respondent decided that they were
24 done. A refusal to abide by Respondent's rules would result to spanking with a board measuring
25 1" by 3" by 24", which was displayed at the flowerbed area.

26 d. On July 23, 2007, Respondent was not pleased with the speed in gathering
27 rocks of the female disabled child that she threw rocks six inches in diameter at her. A clod of
28 dirt with a rock inside hit the child on the inside of her right ankle. The child's ankle began to

1 swell and bruise causing her a lot of pain to walk on it. Respondent threw another rock that hit
2 the child on the inside of her right thigh. The girl's younger brothers had collected enough rocks
3 to satisfy Respondent but the girl had to make a second trip. Upon return, Respondent hit the girl
4 on her back about five times with a piece of wood and a PVC pipe. Respondent also pushed the
5 girl into the pit and told her that if she was not going to move quick enough she was going to kill
6 her. Respondent pushed dirt on the girl while she was lying on the ground in the pit. A bodily
7 check on the children showed that they sustained bruises on their buttocks and thigh areas
8 consistent with being hit by the piece of wood displayed at the flowerbed. The girl was
9 hospitalized. Further investigation revealed that Respondent had threatened the children, which
10 they believed she was capable, that she would leave them in the desert to die, that they would
11 receive worse beatings, and that she would kill them and their father if they report what their
12 grandmother did to them.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Commission of an Act Involving Dishonesty)**

15 15. Respondent has subjected her license to disciplinary action for unprofessional
16 conduct under Code section 2878, subdivision (j), in that Respondent committed acts involving
17 dishonesty. The facts and circumstances regarding this cause for discipline are described in
18 paragraph 13, above and is hereby incorporated by reference. Respondent was dishonest when
19 she received property knowing that they were stolen.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
23 Technicians issue a decision:

24 1. Revoking or suspending Vocational Nurse License Number VN 139521, issued to
25 Betty Anne Humenik;

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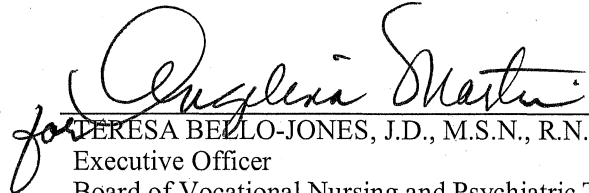
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1 2. Ordering Betty Anne Humenik to pay the Board of Vocational Nursing and
2 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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7 DATED: January 2, 2013


TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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